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No. 290

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

□

SIGISMUND FRANCIS SWACZYK
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

□

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

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INDEX

Subject Index

	PAGE
Title of cause	*Front cover*, 1
This Index	i-vi
Petition for writ of certiorari	1-19
Opinion of the court below	1
Jurisdiction	1
Timeliness of this petition	1
Statute and Regulations involved	2
Questions presented	2
Statement of case	4-14
Form and history of action	4
Facts	4
How issues raised	14
Specifications of error	15
Reasons relied on for granting writ	15
Supporting Brief	21-41
Preliminary	21
Argument	21-41
Conclusion	41

PAGE

Andrew v. New York Bible & Prayer Book Society
6 N. Y. Super. Ct. (4 Sandf.) 156, 181 34

Bien v. Cooke
1 W. W. R. 237 (1944) 30

Cain, Ex parte
39 Ala. 440-441 ..... 24, 34

Cantwell v. Connecticut
310 U. S. 296 21

Commonwealth v. Y.M.C.A.
116 Ky. 711, 76 S. W. 522 22

Congregational Soc'y of Town of Poultney v. Ashley
10 Vt. 241, 244 21

Donahue v. Richards
38 Me. 379, 409 33

Follett v. McCormick
321 U. S. 573 15

Gass v. Wilhite
32 Ky. (2 Dana) 170 34

Grimes v. Harmon
35 Ind. 198, 211 33

Harrison v. Brophy
59 Kans. 1, 5, 51 P. 885 34

Helvering v. Bliss
293 U. S. 144 ..... 16, 21

Knistern v. Lutheran Churches
1 Sandf. Ch. 439, 507 (N.Y.) 33

Lawrence v. Fletcher
49 Mass. 153 34

PAGE

Lehr v. United States
139 F. 2d 919, 921-922 (CCA-5) 15

Martin v. Struthers
319 U. S. 141 21

Mattern v. Canevin
213 Pa. 588, 63 A. 131 21

Methodist Church v. Remington
1 Watts 219, 225, 26 Am. Dec. 61 (Pa.) 34

M. E. Church South v. Hinton
92 Tenn. 188, 190, 21 S. W. 321, 322 22

Minersville School Dist. v. Gobitis
310 U. S. 586 34

Murdock v. Pennsylvania
319 U. S. 105, 106-109, 110, 111, 117 ..... 15, 21

Offord v. Hiscock
86 L. J. K. B. 941 30

People v. Barber
42 Hun (N.Y.) 27 22

People v. Board of Education
245 Ill. 334, 349 33

People v. Pillow
3 N. Y. Super. Ct. (1 Sandf.) 672, 678 34

People v. Steele
2 Bar. 397 33

Rase v. United States
129 F. 2d 204, 209 37

Reinhart, In re
9 Ohio Dec. 441, 445 35

PAGE

Sharraai Berocho v. New York
60 N. Y. Super. Ct. 479, 18 N. Y. S. 792 21

State v. Trustees
Wright 560 (Ohio) 33

State v. Trustees of Township
2 Ohio 108 33

State ex rel. Freeman v. Scheve
65 Neb. 853, 878, 879, 93 N. W. 169 33

Thornton v. Howe
31 Beavin 14 32

Trinidad v. Sagrada Orden, etc.
263 U. S. 578 ..... 16, 21

Trustees of First M. E. Church South v. Atlanta
76 Ga. 181, 192 22

Trustees of Griswold College v. State
46 Iowa 275 21

United States ex rel. Hull v. Stalter
151 F. 2d 633 ..... 15, 39-41

United States ex rel. Trainin v. Cain
144 F. 2d 944, 949 (CCA-2) 15, 23, 30-32

Waite v. Merrill
4 Me. (4 Greenl.) 102, 16 Am. Dec. 238, 245 34

Watson v. Jones
80 U. S. (13 Wall.) 679, 728 32

Watterson v. Halliday
77 Ohio St. 150, 82 N. E. 962 21

Statutes Cited

PAGE

Judicial Code, Sec. 240 (a) as amended by the Act of Feb. 13, 1925 1

Rules of Criminal Appeals (May 7, 1934), Rules XI and XIII 1

United States Code, Title 50, App. §§ 301-318

["Selective Training and Service Act of 1940"]

[Secs. 3 (a), 5 (d), 10 (a) and 11] 2

[Sec. 5 (d)] 10, 16, 23, 32

[Sec. 5 (g)] 10

Selective Service Material Cited

Canadian National Selective Service Mobilization Regulations 30

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Part III, ¶ 3 27

Part IV, subd. 2 35

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PAGE

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- Isaiah 61:1, 2 6
- Luke 22:27 38
- Acts 18:1-4 26
- Acts 20:16-20 26
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- 2 Thessalonians 3:7-17 26
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SUPREME COURT OF THE UNITED STATES

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SIGISMUND FRANCIS SWACZYK
Petitioner
v.
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Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

TO THE SUPREME COURT OF THE UNITED STATES:

Sigismund Francis Swaczyk petitions this court for a writ of certiorari. He shows unto the court as follows:

1. *Opinion of the court below.*

The original opinion of the United States Circuit Court of Appeals is not yet reported in the Federal Reporter, but appears in the record. [92-99] *

2. *Jurisdiction.*

The jurisdiction of this court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this court on May 7, 1934.

3. *Timeliness of this petition.*

The judgment of affirmance was rendered and entered June 13, 1946. [99] The petition for writ of certiorari is filed within the time required by the rules of court.

* Bracketed figures appearing in this petition and the supporting brief refer to pages of printed transcript of the record.

4. *Statutes and Regulations involved.*

Sections 3 (a), 5 (d), 10 (a) and 11 of the Selective Training and Service Act of 1940, as amended (50 U. S. C. App. §§ 301-318) are drawn in question here, as well as Section 622.44 of the Selective Service Regulations (32 C. F. R. Supp. 622.44) promulgated by the President under said Act.

Questions Presented

1. Did the court below misconstrue and misapply as to petitioner the exemption provisions contained in the Act and Regulations for ministers of religion?

2. Did the court below construe the Act and Regulations so as to conflict with the construction placed thereon by the administrative agency?

3. Did the court below erroneously read into the Act and Regulations a requirement that petitioner, a minister of religion, must preach and be recognized as an orthodox minister dependent exclusively for his financial support by a congregation before he could be exempt from training and service as a minister of religion?

4. As to petitioner, who is in fact a minister of religion, did the court below, in construing the Act and Regulations according to the orthodox view of what is a minister, improperly transform itself into a religious hierarchy to determine qualifications of ministers of religion?

5. Did the court below err in finding, contrary to the undisputed evidence showing him to be a minister of religion, that petitioner was only a lay religious worker without ministerial status?

6. When the undisputed evidence before the court below and before the administrative agency showed petitioner to be an ordained minister of a recognized religious organiza-

tion (which recognized him and assigned him to duty as such) regularly preaching each week before a congregation and as a missionary evangelist from house to house, did the court below err in holding that there was basis in fact for the order of the administrative agency denying him exemption contrary to the Act and Regulations?

7. Is there basis in fact for the classification denying exemption to petitioner, a minister of religion, because he renders his services gratuitously and depends for his financial support not upon the congregation he serves but upon money he earns by secular work?

8. As a presiding minister of a group of missionary evangelists (Jehovah's witnesses), is petitioner properly denied his exempt status under the Act because the group of missionary evangelists over which he presides consists entirely of ministers of religion engaged in preaching under his direction?

9. Did the holdings of the court below and the administrative agency discriminate against petitioner because he was not a minister of any popular orthodox religious organization?

10. Did the court below fail to place a liberal interpretation upon provisions of the Act and Regulations exempting ministers of religion and, in applying them to petitioner, disregard the intent and plain terms of the Act and Regulations as well as history of preaching and of freedom of worship in this country as revealed in the broad interpretations given other acts affecting ministers of religion and religious organizations?

Statement of Case

FORM AND HISTORY OF ACTION

This criminal action was instituted in the court below by return of an indictment charging petitioner with a violation of the Selective Training and Service Act of 1940, as amended. [1-2] He was charged with failing to submit to induction as ordered after having reported in accordance with the order to report for induction. [1-2] Thereafter he pleaded not guilty. [2-3] Upon a call of the case for trial he waived the right of trial by jury. [3] He was tried to the court. [3] At the conclusion of all the evidence petitioner filed his motion for a directed verdict and for judgment of acquittal, which was overruled. [8] Simultaneous with such motion, the court was requested to make rulings of law, the effect of which, if found, would require the discharge of the petitioner. [8-10] These requests were overruled. [10] Petitioner was found guilty and sentenced to serve three years in the custody of the Attorney General. [3-4, 10]

FACTS

Petitioner, now twenty-nine years of age, registered with Local Board No. 96, Medford, Massachusetts, on October 16, 1940, under the Selective Training and Service Act of 1940. [5, 11] He was assigned order number 953. He timely filed, in December 1940, a Selective Service questionnaire, answering the questions required of him. [5] He was finally classified on December 29, 1944, by the board of appeal in Class I-A. [5, 22]

From the date of his registration in October 1940 to the date of his final classification, he had been placed by the draft boards in several different classifications, he had received many hearings and he had submitted much evidence which was received by the draft boards. [5-8, 12-89]

In his questionnaire (DSS Form 40) he showed that his

home was Medford, Massachusetts. [13] He also showed that he had completed nine years of elementary school and two years of high school. [13] He declared his secular occupation to be a specification man for Crosby Steam Gauge and Valve Company, manufacturing steam gauges and valves for use on vessels of the armed forces of the United States. [13] * In addition to his secular occupation, he showed that he was a minister of religion customarily serving as such; [16] that he had been a minister of Jehovah's witnesses and the Watchtower Bible and Tract Society since October 21, 1932. [16]

Thereafter he filed Special Form for Conscientious Objector (DSS Form 47) supplementing and augmenting the information in his questionnaire in reference to his training as a minister. He pointed out that he had been brought up by his father and trained for about eight years. He asserted that God's commandments took preference in his life. It was shown that the Bible was the source of his information and that he constantly studied it in conjunction with Bible helps furnished by the Watchtower Bible and Tract Society. He indicated that the behavior in his life that most conspicuously demonstrated the sincerity of his convictions as a Christian was his preaching activity as a minister of the gospel to all who would listen. [23-24] Petitioner further informed the board that he was a member of the Watchtower Bible and Tract Society and referred the board to two other ministers, Jehovah's witnesses of the Watchtower Society. [25] Attached to this Special Form 47 was "An important Letter to the Department of Justice" giving the history and background of Jehovah's witnesses and the Watchtower Bible and Tract Society. This "Letter" which petitioner made a part of his draft board file, showed

* Thereafter he changed his secular employment in April 1941 to the General Electric Company. From April 28, 1941, he was a detail and designing draftsman for bases and layout parts in the construction of motor generators and so advised the local board.

the position of petitioner in reference to participation in war. It pointed out that Jehovah's witnesses are ordained ministers; that Jehovah's witnesses are primarily ordained by Jehovah God (Isaiah 61:1, 2); that everyone of Jehovah's witnesses preaching the gospel in the footsteps of Christ Jesus is recognized by the Watchtower Bible and Tract Society, the legal governing body of Jehovah's witnesses, to be an ordained minister of Almighty God and Christ Jesus; and that such minister is duly authorized to represent the said Society and Jehovah's witnesses as an ordained minister and witness of Jehovah. The "Letter" declared that such recognition of the Society constitutes the human ordination of each one of Jehovah's witnesses. In proof of such ordination each is issued a certificate of ordination. [69-74, 75]

Inasmuch as petitioner was a married man the local board placed him in Class III-A on January 1, 1941. [5, 19] No appeal was taken from this classification because it deferred him from training and service. [5] Some months thereafter he submitted a document certifying that he was an ordained minister of Jehovah's witnesses and was recognized as a minister by the Watchtower Bible and Tract Society. [36] He also submitted an affidavit dated June 13, 1941, from the Company Servant, the presiding minister, of the Malden Company of Jehovah's witnesses, certifying that petitioner was an ordained minister of that congregation and that additional information would be furnished in proof thereof if requested. [37] These two documents were considered by the Government Appeal Agent at the instance of petitioner. The Government Appeal Agent mailed them to the local board, requesting that they be placed in petitioner's file. [42]

On May 24, 1943, petitioner was placed in Tentative Class I. [5, 19] * On June 14, 1943, the local board reclassi-

* Inasmuch as this classification did not make him liable for training and service, being merely a tentative classification pending examination and not subject to appeal, appellant took no appeal therefrom.

fied him to IV-E, which made him liable for training and service as a conscientious objector in a civilian public service camp. [5, 19] He was duly notified of this classification, as was his employer. [19] Within the time and manner required by law, the petitioner requested the board to permit him to appear personally before it for a hearing. [5, 35] After requesting the hearing he was notified that the local board was checking to determine if his name was on the certified official list of Jehovah's witnesses and that when such information was received, he would be notified when to appear for the hearing he had requested. [89] Thereafter the hearing was set for June 28, 1943. [5, 35] He appeared and had a hearing. [5, 35] At the hearing he submitted an affidavit dated June 22, 1943, by the Company Servant of the Malden Company of Jehovah's witnesses in which it was asserted that petitioner was at that time assistant presiding minister of the Malden congregation of Jehovah's witnesses, having been appointed by the Watchtower Bible and Tract Society on November 27, 1942. This augmented the affidavit previously submitted from this official in 1941. [37] Also submitted in writing at said hearing was a statement signed by fifty-six persons in which it was declared that petitioner stood in the same relationship to the Malden Company of Jehovah's witnesses as do the regular and duly ordained ministers of the orthodox religions stand toward their congregations and that he had occupied this relationship to the congregation for more than two years. [39-41] He also at said hearing submitted an extensive document showing the details of his activities and duties as a minister of religion. He declared that he devoted an average of three hours daily in a study of the Bible and Bible publications in order to prepare himself for the performance of his various duties as a minister. [43] He described his duties as assistant presiding minister of the Malden congregation of Jehovah's witnesses, showing

that much time was required in the performance thereof. He showed that he was required to assist the presiding minister, to see that proper records of each member of the congregation was kept, to assist members to devote more time in the furtherance of the beliefs of Jehovah's witnesses, and to report to the congregation on the records kept of the activity. [43] He also mentioned that his duties as assistant presiding minister required him to deliver regularly sermons from the platform to the assembled congregation, expounding the Bible and exhorting members of the congregation to keep the faith. [44] He explained that the time required in the performance of these congregational duties was fifteen hours per month, and over. [44] In addition to these congregational duties at the regular meetings of Jehovah's witnesses, every Tuesday night for one hour petitioner conducted a Bible class for a large group of people, where he presided as chairman and instructor. He was duly appointed by the Watchtower Bible and Tract Society to conduct this Bible class. [44]

Aside from his congregational duties, petitioner pointed out that he himself engaged in missionary evangelistic work from door to door. This he did by calling from house to house presenting the Bible and Bible publications and offering to assist the people in understanding the Bible. [44] Petitioner also showed that he normally performed the duties of a minister of religion in the exercise of his missionary evangelistic work by regularly proclaiming God's commandments to the people. [44] He declared that he was authorized to perform the usual and ordinary ceremonies and sacraments such as the baptismal ceremony, the burial ceremony and the annual Memorial celebration of the Lord's Supper ceremony. [45]

Petitioner further declared his position with respect to the war, showing that as a footstep follower of Christ Jesus he was neutral; [45] that as Christ Jesus was not of "this world", so was he not of "this world", although in it; [46]

that the present world was doomed for destruction and that his duty was to preach the "new world" of righteousness as the only hope of mankind. [46] He pointed out that if he should abandon his covenant obligations to preach as a minister of the gospel and enter the armed forces or a civilian public service camp he would be serving two masters which would make him liable for destruction as a "covenant breaker". [46-47] He likened his neutrality to that of Abraham and the faithful prophets of old. [47-48]

He declared that he willingly and joyfully obeyed all the laws of the land that did not require him to violate the supreme law of Almighty God. [48] He showed that he was obedient to the laws of the land, not because they prescribed penalties but because they were right and just. He explained that all laws for the good of humanity derive their authority from Almighty God. He stated that he was not against the United States and did not influence anybody to refuse to bear arms; and that he wanted to see the United States Government stand until the establishment of God's Kingdom. [48-49]

All the foregoing evidence was accepted by the local board and incorporated into petitioner's Cover Sheet at the local board. [35]

At the personal appearance members of the local board told petitioner that the only reason he was not granted his exemption and classification as a minister of religion was because his name did not appear on the certified official list of Jehovah's witnesses on file with the State Headquarters of Selective Service System. [7] * The local board had previously inquired of the State Director for Massachusetts if petitioner's name was on said certified list. The board was informed that it did not appear on the list filed with

* The local board had previously stated that it was "a rule of the Selective Service not to classify any one [of Jehovah's witnesses] in 4/D unless their name is on" the certified official list. [88] The reason thus advanced was arbitrary and capricious, contrary to law.

Massachusetts Headquarters of Selective Service. [87-88]

At the close of the hearing before the local board, petitioner's request for a change of classification from that of a conscientious objector to that of a minister of religion was refused. Thereupon petitioner appealed by signing the back of the Selective Service questionnaire on June 28, 1943. [19, 35]

On July 29, 1943, the board of appeal determined that the petitioner should not be placed in Class IV-D or any other deferred classification. [19] On August 7, 1943, the file was referred to the Department of Justice for investigation as to the sincerity of petitioner's assertions that he was a conscientious objector. [85] An agent of the Federal Bureau of Investigation was assigned to investigate his case. [85-86] This agent was informed by petitioner that inasmuch as he was requesting exemption from all training and service as a minister of religion and to be placed in Class IV-D,[1] he did "not wish or claim to be classified in class 4E or class I-A-O," [2] and that he would not accept any "other classification except that of a minister 4D". [86] For this reason he informed the special agent of the F.B.I. that he would withdraw his claim for classification as a conscientious objector. [86] On October 8, 1943, the Department of Justice returned the file of the petitioner to the board of appeal. [85-86]

On November 15, 1943, petitioner was placed in Class I-A by the board of appeal and was mailed notice of this classification on November 16, 1943, [19] which he received on November 17, 1943. [50] Petitioner wrote the national Director of Selective Service a letter on November 18, 1943, [50-53] reviewing the facts of his ministry. He stated that he devoted a minimum of sixty-six hours per month to the performance of this work. [50-53] He requested the Director of Selective Service to review his file and take an appeal

[1] Section 5 (d) of the Act.
[2] Section 5 (g) of the Act.

to the President in order to avoid an injustice. [50-53] * A copy of this letter was sent to the local board with a covering letter in which the local board was asked to consider the Opinion No. 14, amended November 2, 1942, of National Headquarters of Selective Service relative to the classification of Jehovah's witnesses which petitioner enclosed. [49, 76-78]

Subsequent to this request petitioner, on December 1, 1943, submitted additional evidence. He forwarded a certificate, duly issued by the Watchtower Bible and Tract Society, to the local board requesting that it be placed in his Cover Sheet and called to the attention of the national Director of Selective Service. [54-55] This certificate declared that petitioner had been associated with the Society as an ordained minister since 1939 and had been serving Jehovah's witnesses and the Society since November 14, 1941, as assistant presiding minister of the Malden Company of Jehovah's witnesses; that petitioner assisted the presiding minister in supervising the activity of the Malden church and kept the records of said congregation; that he conducted Bible studies as a regular Bible study conductor and performed other ministerial duties. The certificate concludes: "He is, therefore, declared by this Society a duly ordained Minister of the Gospel and is authorized to represent this Society and preach 'this Gospel of the Kingdom', proclaiming the name of Jehovah God and Christ Jesus, His King." [55] This certificate was placed in petitioner's Cover Sheet at the local board. [54-55]

On December 14, 1943, the national Director of Selective Service forwarded petitioner letter of November 18, 1943, to the Massachusetts Headquarters of Selective Service requesting it to give attention to the matter urged by petitioner. [53-54]

On December 28, 1943, the Cover Sheet was returned by the State Director for Massachusetts to the local board. [50]

* See Selective Service Regulations, Section 628.1.

On January 17, 1944, petitioner was placed in Class II-B, a classification deferring him from training and service until April 1, 1944. [19] On April 24, 1944, he was placed in Class I-A and notification duly mailed. [22] Thereafter on May 1, 1944, he was inadvertently classified in IV-E, which classification was changed on May 8, 1944, to Class I-A and petitioner notified thereof on May 9, 1944. [22] On May 10, 1944, he wrote a letter to the local board requesting that his classification be reconsidered and that he be placed in Class IV-D exempting him as a minister of religion. He called the board's attention to Opinion No. 14, as amended, of the National Headquarters of Selective Service System with reference to Jehovah's witnesses which he said required the board to exempt him as a minister. [57] [1]

On appeal to the board of appeal he was again placed in Class II-B on June 17, 1944, and notified thereof on June 20, 1944. [22] On September 18, 1944, he was placed in Class I-A and duly notified thereof. [6, 22] On September 25, 1944, he requested permission to appear before the board personally to discuss his case. This request was in writing as required. In such letter he called attention to State Director Advice No. 213-B, issued by the National Headquarters of Selective Service System under which he claimed classification as a minister of religion because of preaching activity. [57-58] [2] Not hearing from the local board on his request for a personal appearance, he wrote on September 27, 1944, requesting appeal of his case in order that he might preserve his procedural rights of appeal under the Regulations. [58] Thereafter, on October 2, 1944, he wrote the local board calling attention to the fact that three others of Jehovah's witnesses, employed also in secular work in addition to their ministerial activites, had been

[1] See printed Record. [76-77]
[2] See printed Record. [79-82]

classified by their local boards in Class IV-D. [6, 59, 86-87] Thereupon, after petitioner had been given a preinduction physical examination, the file was sent to State Headquarters with request that the names of the persons mentioned and their status be checked. [6, 86] *

Then the file was sent to the board of appeal. [86] However, inasmuch as petitioner's request for a personal appearance had not been granted, the local board was instructed to grant such right for appellant to appear. [86-87] Petitioner appeared on November 27, 1944, but presented no new evidence, merely rearguing his case; whereupon he was continued by the local board in Class I-A. [22, 87] On December 4, 1944, he wrote the local board a letter taking an appeal from the I-A classification. He recited in said letter that the local board had stated that it was denying his exemption as a minister on the ground that his name did not appear on the certified official list. [6, 59-60] He accused the local board of failing to follow the instructions of the national Director of Selective Service contained in the directive in reference to the classification of Jehovah's witnesses. [60] On December 12, 1944, his Cover Sheet was again forwarded to the board of appeal, [87] which board classified him in Class I-A on December 29, 1944. [6, 22] On January 3, 1945, he was so notified. [22]

On January 8, 1945, petitioner again wrote the State and National Directors of Selective Service to review his classification. [61-68] In this communication he charged the draft boards with arbitrary and capricious action and failure to comply with the directives of the National Headquarters of Selective Service. [61-68] He duly notified the local board of his request for further review by the State and National Headquarters, enclosing with such notice a copy of his communication to each Headquarters. [61]

Thereafter, petitioner was ordered to report for induc-

* On October 11, 1944, he reported for a preinduction physical examination and was found mentally and physically qualified for military service.

tion. [5, 7] He complied with all the necessary steps of procedure at the induction station. [7] He was given another physical examination and accepted for training and service by the armed forces. [7] He was fingerprinted. [7] He refused to name any beneficiaries. [7] He completed the process at the induction station down to the point where he was required to submit to induction by stepping forward when his name was called. This he refused to do. [7] He was then turned over to the commanding officer who discussed with him his reasons for refusal to submit to induction. [7-8] Petitioner declared that for him to submit to induction would make him a traitor to the cause of Almighty God and would cause him to violate his covenant resulting in his everlasting destruction. [8] He was required to sign a statement whereby he declared his refusal to submit to induction. [28] By reason of his refusal to submit to induction he was administratively rejected by the armed forces. [7, 29, 31, 32, 33, 34]

How Issues Raised

At the close of all the evidence petitioner moved the court for a finding of not guilty and a judgment of acquittal because the evidence was insufficient to warrant a verdict of guilty and because the record showed that he was not guilty as a matter of law. [8] The court denied the motion to which duly excepted. [8] Simultaneously with the motion for a finding of not guilty and a judgment of acquittal, petitioner filed his motion and request for rulings. [8] The trial court was requested to rule that upon all the evidence petitioner was a minister of religion within the meaning of the Act and Regulations and that by reason thereof the classifications by the draft boards and the order to report for induction were void. Accordingly the court was requested to find the petitioner not guilty for this reason.

(Request for Rulings Numbers 4 and 5) [9, 10] *

Specifications of Error

Upon this appeal the petitioner urges both his assignments of error. These assignments present the following errors:

(1) The trial court erred in failing and refusing to grant petitioner's motion for a directed verdict finding the appellant not guilty. [8]

(2) The trial court erred in failing to rule that the petitioner was not guilty because the undisputed evidence showed that he was a duly ordained minister of religion exempt from all training and service and that the draft boards had acted contrary to law in classifying him as liable for training and service. (Request for Rulings Nos. 4, 5 and 7) [9]

Reasons Relied on for Granting the Writ

The holding of the court below is in direct conflict with the holding of the United States Circuit Court of Appeals for the Seventh Circuit in *United States ex rel. Hull* v. *Stalter*, 151 F. 2d 633. Moreover, the holding of the court below is out of harmony with the dictum expressed on the same question in *Lehr* v. *United States* (CCA-5) 139 F. 2d 919, 921-922, and in *United States ex rel. Trainin* v. *Cain* (CCA-2) 144 F. 2d 944, 949. The holding of the court below that petitioner's activity was nothing more than activity of a lay worker of a religious organization and was not that of preaching as a minister is directly in conflict with decisions of this court in *Murdock* v. *Pennsylvania* (1943)

* The court granted Request for Ruling No. 1 that the Government must prove that petitioner was liable for training and service. Request for Ruling No. 2 that the Government must prove that petitioner unlawfully failed to submit to induction was also granted by the court. Moreover, the court ruled, in response to petitioner's Request for Ruling No. 3, that if a registrant was a minister of religion within the meaning of the Act, he had no duty to submit to training and render service under the Act. [8-9, 10]

319 U. S. 105, 106-109, 110, 111, 117, and *Follett* v. *McCormick*, 321 U. S. 573, where the facts in reference to the ministerial activity were identical with the facts in this case. In those decisions this court held that the activity of Jehovah's witnesses occupied the same high estate as do orthodox preaching from the pulpit. Furthermore, the court held that the preaching activity of Jehovah's witnesses was more than preaching. It was a combination of pulpit preaching and evangelism.

The narrow orthodox construction placed upon the terms of the Act and Regulations providing for exemption of ministers of religion is a decision on an important question that is probably in conflict with the applicable decisions of this court. *Trinidad* v. *Sagrada Orden de Predicatores de la Provincial del Santisimo Rosario de Filipinas*, 263 U. S. 578; *Helvering* v. *Bliss*, 293 U. S. 144.

There are important questions of federal law presented upon this petition which have not been, but which should be, settled by this court. They are set out below:

(a) What is the proper definition of the terms "regular minister" or "duly ordained minister of religion" used in Section 5 (d) of the Act? (Selective Training and Service Act of 1940, 54 Stat. 885, 50 U. S. C. App. § 305)

(b) Did Congress intend to confine exemption conferred by the Act to ministers of the orthodox religions?

(c) Did Congress intend to exclude from the exemption conferred by the Act the "regular" and the "duly ordained" ministers regularly or customarily performing their duties and who performed their ministerial services gratuitously and depended for their financial support upon money they themselves earned from secular sources?

(d) Did Congress intend that a regular minister of religion, regularly performing his duties, or an ordained minister customarily performing his duties, could be denied his exemption and the draft board denying it have basis in fact for its action because the minister did not depend for

his financial support upon the congregation he served but upon money earned by him from secular activity?

(e) Did Congress intend that a broad and liberal interpretation should be put upon the ministerial exemption in the Act so as to include the regular and duly ordained ministers of every recognized religious organization within the United States?

(f) Did Congress intend to limit the ministerial exemption provided in the Act to only some ministers of some denominations?

The decision of the court below interpreting the Act and Regulations is in direct conflict with the administrative interpretation placed upon the Act and Regulations by the National Headquarters of the Selective Service System in State Director Advice 213-B. The National Headquarters of the Selective Service System says that "the *regular* discharge of his duties as a minister is a most important factor in determining whether a registrant should be classified" as a minister of religion. (Emphasis added) [80] *

The court below in construing the Act and Regulations contradicts this statement.

The National Headquarters of the Selective Service System says that the "historic nature of the ministerial function of a registrant's *own religious organization must be taken into consideration in each individual case.*" [80] (Emphasis added)

The court below in construing the Act and Regulations contradicts this statement.

The National Headquarters of the Selective Service System holds that performance of secular work does not deprive a minister of his right to exemption, by saying, "In some churches both practice and necessity require the minister to support himself, either partially or wholly, by secular work." [80]

* The administrative interpretation appears in the record in this case, pages 79-84.

The court below in construing the Act and Regulations contradicts this statement.

The National Headquarters of the Selective Service System says that whether one of Jehovah's witnesses is to be classified as exempt "must be determined in each individual case based upon whether he *devotes his life* in the furtherance of the beliefs of Jehovah's witnesses, whether he *performs functions which are normally performed* by regular or duly ordained ministers of other religions, and finally, *whether he is regarded by other* [of] *Jehovah's witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.*" [81] (Emphasis added)

The court below in construing the Act and Regulations contradicts this statement.

It seems that the above obvious conflict between the holding of the court below and the interpretation put upon the Act by the administrative agency constitute special and important reasons for the granting of the writ of certiorari in this case. Moreover, the court below has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision to halt the same.

It is respectfully submitted that this case is one calling for the exercise of this court's supervisory power under the statute and the rules of this court.

WHEREFORE your petitioner prays that the writ of certiorari issue to the Circuit Court of Appeals for the First Circuit directing such court to certify to this court for review and determination on a day certain to be therein specified, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the

docket of said court. Petitioner further prays that the judgment of said Circuit Court of Appeals affirming the judgment of conviction entered by the District Court be here set aside and petitioner dismissed from custody or, in the alternative, the judgment be reversed and the cause remanded for a new trial not inconsistent with this court's opinion. Your petitioner should be granted such other and further relief as to this court may seem just and proper.

SIGISMUND FRANCIS SWACZYK
Petitioner

By ALFRED A. ALBERT
HAYDEN C. COVINGTON
Counsel for Petitioner

SUPPORTING BRIEF

Preliminary

For a statement as to the opinion of the court below, the basis on which the jurisdiction of this court is claimed, the questions presented, the history of the action, how the issues were raised, the evidence received and rejected and the assignments of error relied upon, reference is here made to the foregoing petition for writ of certiorari.

ARGUMENT

A broad and liberal interpretation should be placed upon the Act by the court. It should be held that Congress intended to extend the provisions of the exemption not only to the orthodox denominations but to the dissentient and unpopular groups as well. Certainly Congress did not intend to restrict the protecting shield of the exemption to any particular denomination or creed. Congress intended that ministers of all religious denominations and groups should share the benefit of the exemption, in the same way as did the authors of the Constitution intend to bring within the protecting shield of the First Amendment the ministers of unpopular and dissentient groups as well as those of the popular and more orthodox denominations. *Cantwell* v. *Connecticut,* 310 U. S. 296; *Murdock* v. *Pennsylvania,* 319 U. S. 105; *Martin* v. *Struthers,* 319 U. S. 141.

Uniformly this court has held that a broad and liberal interpretation should be placed upon the provisions of the various statutes exempting from taxation the property of religious organizations. *Trinidad* v. *Sagrada Orden de Predicatores de la Provincial del Santisimo Rosario de Filipinas,* 263 U. S. 578; *Helvering* v. *Bliss,* 293 U. S. 144.*

* Trustees of Grieswold College v. State, 46 Iowa 275; Watterson v. Halliday, 77 Ohio St. 150, 82 N. E. 962; Mattern v. Canevin, 213 Pa. 588, 63 A. 131; Congregational Society of Town of Poultney v. Ashley, 10 Vt. 241, 244. Cf. Sharraai Berocho v. New York, 60 N. Y. Super Ct. 479, 18 N. Y. S. 792.

Preaching activities of ministers of religion bear burdens that would ordinarily fall directly upon the government. Were it not for the eleemosynary work the general public would be required to establish welfare institutions and kindred agencies and services. Thus the government would be required to impose additional taxes and make a heavier demand upon the manpower of the nation. The Christian preaching of the gospel enjoins upon the people of good will an obligation to conduct themselves uprightly and to be obedient to all proper laws. The contribution to the government through the benefits received by the people from the preaching activity of ministers of religion cannot be equaled by the government if it were to undertake such activity. The charitable work of ministers of the gospel "constitute not only the 'cheap defense of nations' but furnish a sure basis on which the fabric of civil society can rest, and without which it could not endure." *Trustees of First M. E. Church South* v. *Atlanta,* 76 Ga. 181, 192; *M. E. Church South* v. *Hinton,* 92 Tenn. 188, 190, 21 S. W. 321, 322; *People* v. *Barber,* 42 Hun (N.Y.) 27; *Comm'th* v. *Y.M.C.A.,* 116 Ky. 711, 76 S. W. 522.

These same arguments as grounds for exemption of the minister of religion from all training and service in the armed forces were duly considered by the House Committee on Military Affairs at hearings had upon the Burke-Wadsworth bill, H. R. 10132. (Hearings before the Committee on Military Affairs, House of Representatives, 76th Congress, 3rd Session, July 30, 1940, pp. 299-305, 628-630) When the bill was before Congress, for consideration before passage, members of Congress declared that the exemption was for the purpose of maintaining the institutions of religions during the war and to insure the performance of and to guarantee that the people would receive religious training and guidance during the war. 55 Congressional Record, pp. 936, 1473, 1527.

The Director of Selective Service has said that in Con-

gress there was "a natural repugnance toward any proposals for drafting ministers of religion for training and Service." *Selective Service in Wartime,* Second Report of Director of Selective Service 1941-42, p. 239. (Appendix p. 39)

In speaking of this exemption in *United States ex rel. Trainin* v. *Cain* (CCA-2, 1944) 144 F. 2d 944, it was said that ministers were exempted in order to prevent "disruption of public worship and religious solace to the people at large which would be caused by their induction."

In order to give the Act and Regulations the broad interpretation contended for here, it is not necessary for the court to strain the language of the Act and Regulations. Indeed, all that has to be done is to put a reasonable interpretation upon the language of the Act and Regulations in the light of history. The Act provides: "Regular or duly ordained ministers of religion and students who are preparing for the ministry . . . shall be exempt from training and service (but not from registration) under this Act." (Selective Training and Service Act, 54 Stat. 887, 50 U. S. C. App. § 305 (d)) The Regulations define a *regular minister of religion* to be "a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister." (Reg. 622.44 (b))

"A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties." (Reg. 622.44 (c))

These definitions do not say that the minister must be a member of an orthodox denomination. They do not

exclude from their provisions any member of any dissentient organization.

The term "regular minister" is used in the Regulations. The term "regular minister" has been defined to be one who regularly teaches and preaches. It has been held that the fact that a minister of religion may be performing secular work during the week to support himself and rendering his ministerial services gratuitously did not prevent him from being a regular minister of religion, because he preached regularly each week, and was therefore a regular minister of religion. *Ex parte Cain,* 39 Ala. 440-441.

It is to be observed that the Regulations use the word "customarily". *Customary,* the word from which it is derived, is synonymous to "usual" and "habitual". It does not mean *continuously.* It is not synonymous to *continuously, uninterruptedly, daily, hourly, or momentarily.* The Century Dictionary defines "customarily" to mean "in a customary manner; commonly; habitually." Therefore the use of the words "regular" and "customarily" implies that Congress intended to give the term "minister of religion" the same broad scope which it has included throughout the history of freedom of worship in this country.

From time immemorial the work of a preacher or minister has not been confined to speaking from a pulpit to a congregation that is capable of supporting the minister financially so as to make it unnecessary for him to depend on other sources for support and maintenance. In fact, ministers more often than not, especially in the rural sections, have been forced to work on farms, in grocery stores, and at other secular work during six days of the week in order to support themselves and their families, so that they might regularly and customarily preach on Sunday. It is a part of the custom of this country that preaching is done regularly when done on Sunday. As long as a minister preaches regularly on Sunday and at night times during the week he is regularly and customarily preaching.

If he regularly and customarily preaches during the week, he is a regular minister of religion under the Act and Regulations. The source of his income is wholly immaterial. Whether his congregation is able to provide him with an income sufficient to maintain himself is immaterial. Whether he is fortunate in being rich and able to maintain himself from stocks, bonds, securities and property investments is not material. Whether the regular minister, like most ministers, is not financially independent, but has to depend on his labors for his support is also immaterial. Time spent in attending to investments from which an income is derived, or to labor in secular callings, is also immaterial in determining whether or not the minister regularly and customarily teaches and preaches.

When the pioneers came to this country and settled it the ministers came along with them, working during the week and preaching regularly on Sunday. When the early settlers pushed into the midwest and the west and pioneered through to the Pacific coast ministers of religion went along, accompanying them, working in the woods and fields and following various secular occupations on six days of each week and regularly and customarily preaching on Sundays. Indeed, even today, in the small towns throughout the nation and in the rural areas are to be found thousands upon thousands of ministers of various religious denominations who work at secular work during the week to support themselves and who on Sunday regularly and customarily preach as do clergymen of the more wealthy congregations in the cities. True, there are scores of thousands of more ministers in the towns and cities, especially the large cities, who have been called by congregations sufficiently large and wealthy to provide them with an income that relieves them of the need to labor during the week. Surely Congress did not mean to say, when it wrote the exemption into the Act, that it was to be extended only to such clergymen of the wealthy congregations able to support their respective

ministers so that they would not be required to work at any secular avocation.

It should be remembered that Christ Jesus' apostle Paul, the foremost spokesman of the early Christian church, worked regularly at making tents. He chose to support himself by secular work rather than to be a charge and burden upon the poor people to whom he ministered publicly and from house to house.*

To construe the Act and Regulations so as to *exclude* ministers who are forced, or who, as Paul, deliberately choose, to resort to secular work to sustain themselves in the ministry and thus to enable themselves to minister gratuitously to the poor and needy and themselves "be dependent on nobody", is to impute to Congress the intention of limiting the benefit of the exemption to the big-town and city ministers. So to construe the Act results in the inequality which Congress ever seeks to avoid. So to construe brings only the un-American result of excluding from 'equal protection of the law' those ministers of small towns and rural communities of the country who are either

* "Paul departed ... to Corinth; and found a certain Jew named Aquila, ... with his wife Priscilla ... and came unto them. And because he was of the same craft, he abode with them, and wrought: for by their occupation they were tentmakers. And he reasoned in the synagogue every sabbath, and persuaded the Jews and the Greeks." (Acts 18:1-4) "Paul ... sent to Ephesus, and called the elders of the church. And when they were come to him, he said unto them, Ye know ... how I kept back nothing that was profitable unto you, but have ... taught you publickly, and from house to house." (Acts 20:16-20) "But we exhort you, brethren, ... to work with your hands ... and *be dependent on nobody*." (1 Thessalonians 4:10-12, *Revised Standard Version* (New York, 1946, Thomas Nelson & Sons); compare Ephesians 4:28, *RSV*.) "For you yourselves know how *you ought to imitate us;* we were not idle when we were with you, we did not eat anyone's bread without paying, but *with toil and labor we worked night and day,* that we might not burden any of you. It was not because we have not that right, but *to give you in our conduct an example to imitate.* ... For we hear that some of you are living in idleness, mere busybodies, not doing any work. Now such persons we command and exhort in the Lord Jesus Christ to do their work in quietness and to *earn their own living.* ... The Lord be with you all. I, Paul, write this greeting with my own hand." (Emphasis added) 2 Thessalonians 3:7-17, *RSV*.

unable or unwilling to enjoy wealth that enables big-town and city ministers to escape the need to labor to support themselves and their dependents. Surely Congress intended to provide the benefits of exemption for ministers of rural and small-town parishes as well as for ministers who chose to answer the call of opulent congregations in 'Big Town' and metropolis. Seen in true perspective, the Act's generous provision for exemption of ministers within the Congressional intent contrasts strikingly with the deficient and inequitable definition of the scope of that provision the court below undertook to carve out of the law in the instant case.

In absence of express provision in the Act and Regulations excluding from the shield of the exemption ministers regularly or customarily preaching who support themselves by their own labor at secular jobs, it must be assumed that Congress intended to include those as well as the minister able to enjoy benefits of his parishioners' wealth so as to excuse him from need to toil for his own livelihood during the week.*

At present there are a large number of clergymen and ministers of Protestant and Jewish denominations who depend for their support upon secular work. In the Northern Baptist Convention 20 percent of all clergymen in rural sections "help earn their keep by work not connected with their churches." (Hartshorne and Froyd, *Theological Education in the Northern Baptist Convention* (1945) Judson Press, Philadelphia, p. 72) In the Southern Baptist Convention the percentage is much higher.

Twenty-four percent of all Protestant clergymen in the United States in 1939 received less than $600 annual salary from their respective churches, of which 14 percent

* Even the National Headquarters of the Selective Service System recognizes that ministers of many denominations are required to perform secular work in order to sustain themselves while engaged in the ministry. State Director Advice 213-B, Part III, ¶ 3. [80]

received less than $99 annually. "There is nothing to indicate that those in the lower brackets also had other occupations, although it is a safe guess that many of them did." (Landis, *Yearbook of American Churches* 1945, Federal Council of Churches of Christ in America, Sowers Printing Co., Lebanon, Pa., p. 155; see also United States Bureau of Census, Series P-16, No. 8, 16th Census.)

It is well known that the majority of the ministers of the Society of Friends (Quakers), Church of Jesus Christ of Latter-day Saints (Mormons), Mennonites, and many others are dependent entirely upon secular work for their support, no salary being paid to their ministers as a general rule.*

It is to be observed that Swaczyk actually devoted as much time to preaching and the duties of his ministry as do the clergymen who have congregations wealthy enough to support them without performance of secular work. He spent a minimum of 66 hours monthly in house-to-house missionary work. [43, 45, 52, 68] He devoted between 10 and 20 hours per month to preaching before the congregation, studies, special meetings and performance of congregational duties. He also spent many more hours in preparation for ministry. [43-45, 52, 68] The orthodox church-sustained clergy do not spend any more time in their preaching activities, yet they do not sustain themselves by secular work as did petitioner.

Throughout history of religious organizations ministers have been distinguished from church-sustained clergy. Even the self-supporting ministers contributed more than the clergy to the spread of religion along with the pioneers in the days of expansion to the West.

" . . . about the anniversary meetings, . . . a brief,

* " 'I am the only person in the church,' [Brigham] Young said to Greeley in 1859, 'who has not a regular calling apart from the church service'; and he added, 'We think a man who cannot make his living aside from the ministry of the church unsuited to that office.' " Linn, *The Story of the Mormons* (1902, The Macmillan Co.) p. 576.

summary view. . . . About two hundred of God's ministers were in attendance, all told—for *all* are ministers, servants of the truth, from our standpoint and from the standpoint of God's word; in which all are recognized as *priests*—of the royal priesthood . . . The general sentiment . . . was, that they would be all the more diligent hereafter to pass the pleasant bread of truth to the hungering sheep of the Lord." *Watch Tower,* April 1890, Vol. XI, No. 5, p. 1.

"The church has always been more successful in winning kingdoms for her Christ, when she has adopted just this lay preaching method. . . . The whole church a royal priesthood, and so the whole church a preaching church, that is the New Testament ideal." *Lay Preaching* (Secretary's Annual Report), Hoyt, American Baptist Publication Society, 1869, New York, p. 21.

The only way the preaching job could be successfully done in the pioneer days was said to be "by the preaching and teaching, under Episcopal direction, by laymen deriving their support from their own secular labors." *The Missouri Valley and Lay Preaching,* Wharton, 1859, New York, p. 18.

"Although made the special work of certain representative disciples, it is, in fact, enjoined upon the Church as a whole, and upon its members in particular, 'as of the ability which God giveth' (1 Pet. 4:10, 11) . . . From these scriptural examples, it is just to infer that lay preaching, in the various forms of teaching, evangelizing, and prophesying, had from the first a double object: 1, to do good to all men; and, 2, to develop and prove the gifts of those who from time to time were called from the ranks of the laity to the more public ministry of the Word. Such, doubtless, continued to be the practice of the Church during the early centuries, and it was only by degrees that it became modified under the hierarchial spirit which became developed at a later period. . . . In the Reformed churches there was a general breaking away from the trammels of ecclesiasticism, together with an energy of purpose which

did not scruple to employ any agencies at its command for the dissemination of truth. . . . The first formal and greatly effective organization of lay preaching as a system, and as a recognized branch of Church effort, took place under John Wesley at an early period of that great religious movement known as the revival of the 18th century." *Cyclopedia of Biblical, Theological, and Ecclesiastical Literature,* McClintock and Strong, New York, Harper & Bros., 1880.

The English Court of Appeal held that the conscription law of that country, passed during the first world war, should be given an interpretation so as to include a part-time minister of unorthodox Strict Baptist Church (*Offord* v. *Hiscock,* 86 L. J. K. B. 941) In that case the person held to be a minister was a solicitor's clerk during six days of the week. He was invited to preach on one occasion and it appeared that he was satisfactory, so he was engaged as the minister. In that case Viscount Reading said: "I have come to the conclusion that there is an absence of any evidence from which the Justices could draw the conclusion that he had not brought himself within the exception to the statute enforcing military service. In my view it is clear that he had determined to devote himself to the ministry."

Under the Canadian National Selective Service Mobilization Regulations the Supreme Court of Saskatchewan held that a registrant was entitled to exemption from all training and service as a minister of religion. (*Bien* v. *Cooke,* 1944, 1 W. W. R. 237) There the minister spent six days a week farming. No special educational requirements were necessary. All that was required was that he satisfy the general secretary, who was a railroad engineer, that he believed the New Testament, and that he met the necessary moral requirements.

The United States Circuit Court of Appeals for the Second Circuit, in *United States ex rel. Trainin* v. *Cain,* 144 F. 2d 944, said that the regular performance of secular

employment was not incompatible with the claim for exemption as a regular minister of religion: "While the two positions are not mutually exclusive, and a validly draft-exempt minister of religion could still maintain a legal practice on the side, the existence of the latter can be taken into consideration in determining whether registrant is in fact a regularly practicing minister."

The holding in the *Trainin* case is not apposite here. However, the principles laid down in the opinion in that case would guide this court to find that petitioner is a regular minister of religion. It should be observed that in the *Trainin* case the Second Circuit Court of Appeals found that the registrant did not regularly perform his functions as a rabbi. Moreover, the court found in the draft board record in that case that Trainin never pressed his claim very strongly. Also the court found that his testimony and proof concerning the regular performance of his functions as a rabbi were thoroughly discredited. No such circumstances exist in the instant case. Petitioner was not discredited in his testimony. There was no doubt that he performed regularly his duties as a minister of religion. There was no question as to his good faith. There was no evidence offered that he did not perform his duties as a minister of religion.

Even assuming, for the purpose of argument only, that petitioner is not, in the opinion of the court, a regular minister of religion within the meaning of the Act and Regulations, he is, nevertheless, an ordained minister of religion.[1] In his Selective Service questionnaire, he stated: "I have been authorized and ordained by Jehovah God and the Watch Tower Bible and Tract Society, as is explained in the Bible in John 15:16."[2] He submitted to the local board two certificates of ordination [36, 55, 67] claiming

[1] Selective Training and Service Act, § 5 (d); Selective Service Regulations, § 622.44

[2] "Ye have not chosen me, but I have chosen you, and ordained you, that ye should go and bring forth fruit, and that your fruit should remain."

classification as an ordained minister. [5, 62-64] Under the circumstances that petitioner was ordained and regularly performed his duties as an ordained minister, "a more difficult question" is presented. *Trainin* v. *Cain, supra.*

Since neither the Act nor the Regulations exclude dissentient groups, they cannot be construed by the court to exclude unorthodox ministers. It must be assumed that the Act and Regulations were intended to embrace within the exemption the ministers of all denominations, whether popular or unpopular, orthodox or unorthodox. Any other view would require us to impute to Congress the intention of discriminating between religious denominations and ministers according to nebulous or arbitrary standards, with resultant inequitable, crochety application of the statute as attempted by the court below in the instant case.

A realistic approach to the construction of an act providing for benefits to religious organizations requires that the federal courts make "no distinction between one religion and another. . . . Neither does the court, in this respect, make any distinction between one sect and another." (Sir John Romilly in *Thornton* v. *Howe,* 31 Beavin 14) The theory of treating all religious organizations on the same basis before the law is well stated in *Watson* v. *Jones,* 80 U. S. (13 Wall.) 679, 728, thus: "The full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." It must be assumed that Congress, when it provided in Section 5 (d) of the Act for ministers of religion to be exempt from all training and service, intended to adopt the generous policy above expressed so as to extend to all ministers of all religious organizations.

It has been judicially declared that were "the adminis-

tration of the great variety of religious charities with which our country so happily abounds, to depend upon the opinion of the judges, who from time to time succeed each other in the administration of justice, upon the question whether the doctrines intended to be upheld and inculcated by such charities, were consonant to the doctrines of the Bible; we should be entirely at sea, without helm or compass, in this land of unlimited religious toleration." (*Knistern* v. *Lutheran Churches,* 1 Sandf. Ch. 439, 507 (N.Y.)) All religions, however orthodox or heterodox, Christian or pagan, Protestant or Catholic, stand equal before the law which regards "the pagan and the Mormon, the Brahmin and the Jew, the Swedenborgian and the Buddhist, the Catholic and the Quakers as all possessing equal rights." (*Donahue* v. *Richards,* 38 Me. 379, 409. Cf. *People* v. *Board of Education,* 245 Ill. 334, 349; *Grimes* v. *Harmon,* 35 Ind. 198, 211) Protection is therefore afforded not only "to the different denominations of the Christian religion, but is due to every religious body, organization or society whose members are accustomed to come together for the purpose of worshipping the Supreme Being." (*State ex rel. Freeman* v. *Scheve,* 65 Neb. 853, 879) It is now clear that the American legislative, executive and judicial policy concerning religious organizations, beliefs and practices is one of masterly inactivity, of hands off, of fair play and no favors. (*People* v. *Steele,* 2 Bar. 397) "So far as religion is concerned the laissez faire theory of government has been given the widest possible scope." (*State ex rel. Freeman* v. *Scheve,* 65 Neb. 853, 878, 93 N. W. 169)

Neither Shakers nor Universalists will be discriminated against in distributing the avails of land granted by Congress in 1778 for "religious purposes." (*State* v. *Trustees of Township,* 2 Ohio 108; *State* v. *Trustees,* Wright 560 (Ohio)) Whatever the personal views of a judge may be concerning the principles and ceremonies of the Shaker society, whether to his mind their practices smack of fanat-

icism or not, he has no right to act upon such individual opinion in administering justice. (*People* v. *Pillow,* 3 N. Y. Super. Ct. (1 Sandf.) 672, 678; *Lawrence* v. *Fletcher,* 49 Mass. 153; *Gass* v. *Wilhite,* 32 Ky. (2 Dana) 170) in the field of religious charities and uses the doctrine of superstitious uses was eliminated from American jurisprudence as opposed to the spirit of democratic institutions because it gave preference to certain religions and discriminated against others. It was held that the doctrine was contrary to "the spirit of religious toleration which has always prevailed in this country" and could never gain a foothold here so long as the courts were forbidden to decide that any particular religion is the true religion. (*Harrison* v. *Brophy,* 59 Kans. 1, 5, 51 P. 885; cf. *Methodist Church* v. *Remington,* 1 Watts 219, 225; 26 Am. Dec. 61 (Pa.); *Andrew* v. *New York Bible and Prayer Book Society,* 6 N. Y. Super. Ct. (4 Sandf.) 156, 181) Thus in the field of various religions as long as a particular method of preaching does not conflict with the law of the rights of others no matter how exotic or curious it may be in the opinion of others it is fully protected by the law. (*Waite* v. *Merrill,* 4 Me. (4 Greenl.) 102, 16 Am. Dec. 238, 245)

"History teaches us that there have been but few infringements of personal liberty by the state which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been directed, as they are now, at politically helpless minorities." *Minersville* v. *Gobitis,* 310 U. S. 586.

In the case of *Ex parte Cain,* 39 Ala. 440, supra, in determining whether or not the part-time minister attempted to be drafted under the conscription act of the Confederacy during the Civil War was entitled to exemption, the Alabama Supreme Court aptly states the limitation of the judiciary in passing upon matters spiritual in so far as they pertain to the activity of a minister claiming exemption, saying: "Neither this court, nor any other

authority, judicial or executive, in this government, is a hierarchy, clothed with the power of determining the orthodoxy of any religious sect or denomination. It does not vary the question, in the present case, that Mr. Cain belonged to a sect of religionists, who perform ministerial labor gratuitously."

In the decision styled *In re Reinhart* (9 Ohio Dec. 441, 445) the court said: "The moment an attempt is made to limit or restrict ordination to some special form of ceremony we begin to discriminate between the diverse modes and forms of ordination practiced by the various religious societies. The laws of Ohio make no discrimination in any respect between Catholic or Protestant, Greek, Gentile, Jewish, or any other religious societies or denominations, much less do they attempt to prescribe any mode or form of ministerial ordination, which is defined in the Standard Dictionary as 'the act or rite of admitting and setting apart to the Christian ministry or to holy orders, especially in the Roman Catholic, Anglican and Greek churches; consecration to the ministry by the laying on of hands of a bishop or bishops; in other churches, consecration by a presbytery, synod, or council of ministers.'"

The intent to give the Regulations a broad, liberal interpretation as to what constitutes a minister of religion is proved in the fact that the terms of the Act and Regulations have been extended to include within the exemption provision "Lay Brothers" of the Holy Roman Catholic Church. (State Director Advice 213-B, Part IV, subd. 2.) [81] It should be observed that the "Lay Brothers" are not, in the strict sacerdotal sense, ministers of religion, as declared by the Director of Selective Service, who concerning the broad interpretation to be placed upon the Act said: "Freedom to worship is one of the four freedoms for which we fight. Even in days before we realized that our civilization was to be challenged, even to its religious roots, it was felt that regular and duly ordained ministers should

be exempted from military duty. . . . The principle was extended to persons who were not, in any strict sense, ministers or priests in any sacerdotal sense. It included Christian Brothers, who are religious, who live in communities apart from the world and devote themselves exclusively to religious teaching; Lutheran lay teachers, who also dedicate themselves to teaching, including religion; to the Jehovah's witnesses, who sell their religious books, and thus extend the Word. It includes *lay brothers* in Catholic religious orders, and many other groups who dedicate their lives to the spread of their religion." [1] (Emphasis added)

"Lay Brothers" of the Holy Roman Catholic Church are not priests, nor in line for the priesthood, of the Roman Catholic Hierarchy. "We may distinguish two types of Brothers; viz.: those who directly serve the people at large for example by teaching, and those who do so indirectly, namely, by directly serving priests or other religious who in turn serve the people directly. . . . Let us consider the offices performed by the second group a little more closely. These men do the manual work necessary in religious communities and institutions. Their ministrations, given freely, are absolutely necessary, if the priests are to be free to attend to their special work. Hence, the arguments which prove the need of clergy prove likewise the need of these . . . very important members of religious communities. They also ought, therefore, to be exempted." [2] Menial work and entire absence of the doing by them of any strictly ecclesiastical duties constitute the whole functional status of one very important of two types of "Lay Brothers". They do not conduct religious services of any

[1] *Selective Service in Wartime,* Second Report of the Director of Selective Service, 1941-42 (Government Printing Office, Washington) pages 239-241.

[2] Kennedy (Congressman Martin J.) letter to House Military Affairs Committee, August 7, 1940, *Hearings,* etc., 76th Cong., 3d Sess., on H. R. 10132, pp. 628-630.

kind and many are declared to be uneducated and "unable to attain the degree of learning requisite for Holy orders" but "able to contribute by their toil" and "able to perform domestic services or to follow agricultural pursuits".[1]

The court below, in quoting from the decision in *Rase* v. *United States,* 129 F. 2d 204, 209, approved the erroneous statement that Jehovah's witnesses make no distinction between "shepherd and flock". [95] This is error. The conclusion quoted from the *Rase* case as well as that of the court below is contrary to the facts. Jehovah's witnesses make a distinction between "shepherd and flock". Jehovah's witnesses consider that they are the "shepherds" because they preach to and teach the people as ministers of Almighty God, JEHOVAH, under His appointed Good Shepherd, Christ Jesus. This they do from door to door and publicly, as did Christ Jesus, His apostles, the disciples, and the thousands of Christian ministers who were associated with them in the various congregations at Jerusalem, Antioch, Alexandria, Corinth, Rome, and elsewhere. The "flock" served by Jehovah's witnesses is to be found in the homes of the people, where Jehovah's witnesses conduct Bible studies, servicing millions of persons annually.[2]

Moreover, there are 70,000,000 people in this country who do not belong to any church, as well as many other millions belonging to a church who do not attend. These millions need to be served by missionary evangelists. Jeho-

[1] *The Catholic Encyclopedia* (1907, Robert Appleton & Co., N. Y.) Vol. 9, p. 93. "Lay Brothers" who do not preach from the pulpit, and who do not minister the sacraments or otherwise function as do the ordained Catholic clergy, number at present, in the United States, more than 10,000. (Official Catholic Directory 1946, New York, P. J. Kenedy & Sons) That, it is to be observed, is more than twice the entire number of some 4,000 of Jehovah's witnesses who have been illegally classified and committed to prison under the Act because certain draft boards did not regard them as having, under the law, a standing equivalent to that of Roman Catholic priests and the clergymen of other popular orthodox denominations.

[2] See 1946 *Yearbook of Jehovah's witnesses* (New York, Watch Tower Bible and Tract Society), pp. 43-45.

vah's witnesses have answered the need by calling upon the people as missionaries from house to house.

In performing their missionary work, Jehovah's witnesses act as ministers, going to the congregation. They, unlike orthodox clergymen, do not require the congregation to come to them. Jehovah's witnesses act as servants to the people, as did the Lord Christ Jesus, who was a humble servant of the people of good will whom He met in His door-to-door missionary work.*

Each one of Jehovah's witnesses must preach in order to be one of Jehovah's witnesses. One who does not preach is not one of Jehovah's witnesses. Jehovah's witnesses are a society of missionary evangelists, engaged in missionary preaching work of the highest type, at home as well as abroad, and throughout the whole world. It is not unusual to hear of a congress of ministers. The Jesuit organization (Society of Jesus) that functions in connection with the Roman Catholic Hierarchy is, for example, a society of ministers. Various foreign-missionary societies of the popular orthodox religious denominations are composed exclusively of ministers, ordained and unordained, who preach the religions of the respective denominations only in foreign countries from door to door and house to house in the same way as do Jehovah's witnesses in the United States and in all other countries. Therefore it is highly improper and inappropriate to compare a congregation of Jehovah's witnesses with a congregation of Baptists or other Protestant laymen-religionists, or Jews, in the orthodox sense. Of course in those orthodox religious congregations of laymen only one or two persons minister (as recognized ministers) to the entire congregation. Such

* "Whether is greater, he that sitteth at meat, or he that serveth? is not he that sitteth at meat? but I am among you as he that serveth." —CHRIST JESUS, at Luke 22:27.

"Behold, I stand at the door, and knock: if any man hear my voice, and open the door, I will come in to him, and will sup with him, and he with me."—CHRIST JESUS, at Revelation 3:20.

ministering consists of preaching done from a pulpit to the assembled laymen-congregants. Those preached to come to the preacher to hear him. The preacher does not go to the people at their homes as do Jehovah's witnesses. Members of congregations of orthodox clergymen do not preach as do Jehovah's witnesses. Such members or congregants are only preached to. Among Jehovah's witnesses each one of Jehovah's witnesses is a preacher and preaches regularly to hundreds, if not thousands, of others each year. Hence, to compare a congregation of laymen, served by an orthodox religious clergyman, to an assembly of missionary evangelists (Jehovah's witnesses), and by rule of thumb to say that such assembly of missionary evangelists is not a group of ministers simply because the congregation of laymen is not a group of ministers, is syllogistic and logistical legerdemain which discriminates and destroys entirely the intent of Congress in providing exemption for ministers of all denominations regardless of whether they were able to get a congregation to come to them or whether they had to go to the congregation; and regardless of whether they were wealthy enough to preach without choosing or being forced to resort to secular work to support themselves in their ministry.

In closing, it is fitting to quote from the opinion in *United States ex rel. Hull* v. *Stalter* (CCA-7) 151 F. 2d 633, where *inter alia* it was said:

"Much is said in the briefs both complimentary and derogatory to Jehovah's Witnesses. With this argument we are not concerned. Whatever a draft board or a court, or anybody else for that matter, may think of them is of little consequence. The fact is, they have been recognized by the Selective Service System as a religious organization and are entitled to the same treatment as the members of any other religious organization. . . . In our view, every registrant, whether he be Jehovah's Witness or otherwise, is entitled to have his status determined according to the

facts of his individual case. Also, a registrant's classification should be determined by the realities of the situation, not merely by what he professes. A registrant is not entitled to exemption merely because he professes to be a minister, but he is entitled to such exemption if his work brings him within that classification.

"Selective Service Regulations (622.44) recognize two classes of ministers, (1) a regular minister of religion, and (2) a duly ordained minister of religion. The former 'is a man who customarily preaches and teaches the principles of religion of a recognized charge [*sic,* properly 'church'], religious sect, or religious organization of which he is a member . . . ' The latter 'is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church . . . ' The Selective Service System has even more broadly defined the term 'regular minister of religion.' Under the heading, 'Special Problems of Classification' (*Selective Service in Wartime,* Second Report of the Director of Selective Service, 1941-42, pages 239-241), it is stated:

> "The ordinary concept of 'preaching and teaching' is that it must be oral and from the pulpit or platform. Such is not the test. Preaching and teaching have neither locational nor vocal limitations. The method of transmission of knowledge does not determine its value or effect its purpose or goal. One may preach or teach from the pulpit, from the curbstone, in the fields, or at the residential fronts. He may shout his message 'from housetops' or write it 'upon tablets of stone'. He may give his 'sermon on the mount', heal the eyes of the blind, write upon the sands while a Magdalene kneels, wash disciples' feet or die upon the cross. . . . He may walk the streets in daily converse with those about him telling them of those ideals that are the foundation of his religious con-

> viction, or he may transmit his message on the written or printed page, but he is none the less the minister of religion if such method has been adopted by him as the effective means of inculcating in the minds and hearts of men the principles of religion. . . . To be a 'regular minister' of religion the translation of religious principles into the lives of his fellows must be the dominating factor in his own life, and must have that continuity of purpose and action that renders other purposes and actions relatively unimportant."

. . . There is not a scintilla of proof which impugns his honesty, good faith or devotion to the cause. Respondent makes no criticism of relator [Hull] in this respect. Neither has the Selective Service System of Ohio done so insofar as relator is individually concerned. Such criticism as is disclosed by the record was directed entirely at Jehovah's witnesses as a class."

Conclusion

It is submitted that this case is one calling for the exercise by this court of its supervisory powers under the Judicial Code and the Rules of this court. To that end the petition for writ of certiorari should be granted so as to correct the assigned errors committed; and petitioner further prays that the judgment rendered by the circuit court of appeals and the district court against petitioner be reversed and petitioner discharged or, in the alternative, that the judgments be reversed and a new trial ordered.

Respectfully submitted,

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